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REMEDY FOR UNLAWFUL EXPULSION OF MEMBERS OF TRADE UNIONS.—The growing activity of trade unions in American industry has resulted not only in Federal and State statutes regulating the functions and practices of labor unions,[1] but in a well-defined body of judicial legislation concerning their private internal activities and the relation of the union members to the governing body.

For the latter purpose the courts have regarded labor unions as voluntary or unincorporated societies.[2] The members of the union are governed by their own constitution and by-laws and enforce their own rules. These rules the courts will abide by, unless they are grossly unjust, against public policy, immoral or contrary to the law of the land.[3] The decisions of the tribunals or governing boards of an association as determined by its constitution or by-laws, being *quasi*-judicial, will not be interfered with by the courts except when the civil, pecuniary or property rights of members are involved.[4] But the functions of labor

[1] 6 VA. LAW REV. 47, and authorities there cited.
[2] Otto *v.* Journeyman Tailors', etc., Union, 75 Cal. 308, 7 Am. St. Rep. 156.
[3] Swaine *v.* Miller, 72 Mo. App. 446. See note to Austin *v.* Searing (N. Y.), 69 Am. Dec. 665, 672.
[4] State *v.* Odd Fellows' Grand Lodge, 8 Mo. App. 148, 154. The jurisdiction of a court of equity over a labor union or voluntary associa-

unions are such that mere membership constitutes such a property right as to enable one to appeal to a court of equity when his membership is illegally denied.[5] The general attitude of the courts toward the governance of labor unions is expressed thus by a New York decision:[6]

> "* * * the rule in regard to voluntary associations of this character is that the constitution and by-laws are the sole rule that governs the relations between the association and its members, and that the courts cannot redress any action of the association in expelling or punishing a member, when such action has been taken in accordance with the express provisions of the constitution and by-laws."

In a recent New York case[7] a court of equity reversed the action of a trade union association and restored to membership the plaintiffs, who were expelled without notice, trial or opportunity to defend themselves. Although there be no provision on the subject in the constitution or by-laws, or even if they provide for summary action, a member of a labor union cannot be fined, suspended or expelled summarily, but he must be given reasonable notice and opportunity to be heard and his trial conducted in good faith; otherwise the fine, suspension or expulsion will be illegal and the union will be liable in damages.[8]

In all disciplinary proceedings against a member a court of equity will enforce strict adherence to the provisions of the by-laws and constitution of the union. Thus, where a by-law, providing that the trial of a member should be held before the executive board of the association, reserved to the association the power to pronounce judgment, a judgment rendered by the executive board given authority to act by a resolution of the association was set aside by the courts.[9] Also, the manner of giving notice to a member in expulsion proceedings must be in strict accordance with the provision in the union constitution.[10] Of course, differences and irregularities in procedure may be waived.[11]

The great weight of authority supports the proposition that where the constitution and by-laws are not illegal and the union itself is lawful, the decision of the governing officials of a labor

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tion is founded upon protection of the right of property of its members. It is exercised not because of the fact of membership alone, but because the interest of an aggrieved member, pecuniary or otherwise, is involved. An exhaustive note on this point may be found in 7 Am. St. Rep. 160.

[5] Fuerst *v.* Musical, etc., Union, 95 N. Y. Supp. 155.

[6] Austin *v.* Dutcher, 67 N. Y. Supp. 819, 821.

[7] Gilmore *v.* Palmer, 179 N. Y. Supp. 1.

[8] Cotton Jammers', etc., Ass'n *v.* Taylor, 23 Tex. Civ. App. 367, 56 S. W. 553; People *v.* Musical, etc., Union, 118 N. Y. 101, 23 N. E. 129.

[9] People *v.* Independent Dock Builders, 149 N. Y. Supp. 771.

[10] Weiss *v.* Musical, etc., Union, 189 Pa. St. 446, 69 Am. St. Rep. 820.

[11] See Washington Beneficial Society *v.* Bacher, 20 Pa. St. 425. Sperry's Appeal, 116 Pa. St. 391, 9 Atl. 478.

union in a disciplinary proceeding, being *quasi*-judicial, will be considered conclusive and the court will inspect the proceedings only to see whether the accused has had "fair notice and opportunity to be heard, and, if so, it will not go into the *facts*, to the end that it may substitute its judgment for that of the organization."[12] Of the merits of the case, whether ground for the fine, suspension or expulsion of the accused exist, the association or union is usually the sole judge. However, when there are no rules of disciplinary procedure, the courts will interfere to see that the proceedings were honest and reasonable, and will also inquire whether grounds for punishing or disqualifying a member exist. In *Weiss* v. *Musical, etc., Union*,[13] where there was no provision for expulsion of a member in the charter of the union, the court said that this power could be exercised "when the member has been guilty of some infamous offense, or has done some act tending to the destruction of the society." It was held in this case that the circulation of literature criticizing the management of the union and urging a meeting of the members for discussing matters of union policy did not constitute ground for expulsion.

A few courts, on the other hand, have inquired not only into the regularity and fairness of the disciplinary proceedings, but also into the sufficiency of the grounds for expulsion, thus leaving room for the substitution of the judgment of the court for that of the union.[14] Thus it has been held that gaining admission to an association by fraudulent methods was ground for expulsion.[15] But most of the cases are hostile to this doctrine.

A radical tendency toward interfering in the private internal affairs and management of labor unions is shown in *Hamilton* v. *Rouse*,[16] where the court undertook to interpret and enforce by-laws of a union, which were violated by the union officials, resulting in injury to one of its members. The court discusses the facts of the case and reaches a decision without mentioning the principles underlying its policy or canons of judgment. No authorities, either of decided cases or of law-writers, are cited in the opinion. In view, however, of the public nature and importance of labor unions, such a liberal attitude on the part of the courts is probably justified. The nearest approach to a definition of this policy is given by an Illinois court,[17] which, bearing in mind the lack of equity jurisdiction over disputes between members of labor unions generally, said, "in extreme cases of unfairness and gross injustice inflicted upon a member, a court of equity will take

[12] Gilmore *v.* Palmer, *supra;* People *v.* Independent Dock Builders, *supra;* Froelich *v.* Musicians, etc., Association, 93 Mo. App. 383.

[13] *Supra.*

[14] See Schouten *v.* Alpine, 137 N. Y. Supp. 380, which was overruled in Schouten *v.* Alpine, 215 N. Y. 225, 109 N. E. 244.

[15] Krause *v.* Sander, 122 N. Y. Supp. 54.

[16] 165 N. Y. Supp. 173.

[17] Engel *v.* Walsh, 258 Ill. 98, 101 N. E. 222. See also Ryan *v.* Cudahy, 157 Ill. 108, 41 N. E. 760, 49 L. R. A. 353.

jurisdiction." With such a broad basis of jurisdiction, it would seem that nearly every dispute regarding trade union affairs among the members of the union would be justiciable in the courts. Should this policy be accepted, the student of contemporary economic and industrial problems cannot but foresee an interminable mass of new litigation confronting American judicial tribunals with the rapid growth of the trade union movement.

In order to discourage the appeal of such disputes to courts of equity, most of the cases have adhered to the rule that the aggrieved party must exhaust the remedies provided by the constitution or by-laws of his union or association before he can appeal to the courts.[18] Other cases have held that where the union has acted illegally in expelling a member in violation of its constitution or by-laws, appeal may be taken immediately and directly to the courts instead of first exhausting the remedies in the union.[19] Where the conditions for appeal within the union are so burdensome as to be almost prohibitive, the courts will take cognizance of the case at once.[20]

THE HARRISON NARCOTIC ACT.—The ever-increasing number of persons in the United States addicted to the use of habit-forming drugs and the demoralizing and destructive consequences that result therefrom led Congress in 1909[1] to enact measures in restraint of the traffic in opium, its derivatives and preparations. The Harrison Narcotic Act[2] buttressed the act of 1909, further circumscribing the traffic in these drugs. It is not, however, within the province of this note to trace the history of the attempt of Congress to cope with the drug traffic or to comment upon the effect these measures have had in arresting the course of the evil.

[2] Act Dec. 17, 1914, c. 1, 38 Stat. 786, Comp. Stat. '16, § 6287h.

The passage of the Harrison Act gave rise to grave questions as to the constitutionality of the statute. In form the act is a revenue measure, in its operation it affects the moral and social welfare of the citizens of the States. "The power to tax" as Chief Justice Marshall expressed it,[3] "involves the power to destroy," and the exercise of its power to tax gives Congress a formidable

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[18] Raych *v.* Hadida, 130 N. Y. Supp. 346; Brown *v.* Harris County, etc., Society (Tex.), 194 S. W. 1179.

[19] Swaine *v.* Miller, *supra;* Fales *v.* Musicians', etc., Union (R. I.), 99 Atl. 823.

[20] Weiss *v.* Musical, etc., Union, *supra.*

[1] Approved Feb. 9, 1909, 35 Stat. 614, c. 100, § 1, Comp. Stat. '16 § 8800. "That after the first day of April, 1909, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: Provided, that opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law."

[3] McCulloch *v.* Maryland, 4 Wheat. 316.